

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

INTERLOCAL COOPERATION AGREEMENT
FOR THE ACQUISITION, PLANNING, AND OPERATION OF
THE SOUTHVIEW PROPERTY
BY THE COUNTY OF DURHAM AND THE CITY OF DURHAM

THIS INTERLOCAL COOPERATION AGREEMENT (Agreement) is made and entered into this the _____ day of _____, 20 ____, by the COUNTY of DURHAM (the County), a political subdivision of the State of North Carolina, and the CITY of DURHAM (the City), a North Carolina municipal corporation. This Agreement is made as an Interlocal Cooperation Agreement pursuant to Part I, Article 20 of Chapter 160A of the General Statutes of North Carolina.

Background

The City owns approximately 134 acres in Durham County shown as Tract 1 and Tract 2 (the Property) on a plat entitled, "Boundary Survey for Trust for Public Land, Metro Title Insurance, The City of Durham, Durham County and Clean Water Management Trust Fund," recorded in Plat Book 193, Page 1, which is attached to this Agreement as **Exhibit A**, and fully incorporated herein.

The City, the County, the Trust for Public Land (TPL), the State of North Carolina acting through the Clean Water Management Trust Fund (CWMTF), and the City of Raleigh acting through the Upper Neuse Clean Water Initiative (UNCWI) worked together for the purpose of acquiring and conserving the Property for both watershed protection and future park purposes. The City purchased the Property from TPL.

In keeping with the County's interest in protecting the Falls Lake watershed and Durham County's open space, the Board of County Commissioners has supported the County's acquiring 103.477 acres of the Property from the City as illustrated in **Exhibit B**.

The portion of the Property that the County will be acquiring is the more environmentally sensitive portion of the site and is encumbered by a conservation easement held by CWMTF that restricts most development but does allow for low impact recreational use such as trails. The portion of the Property the County will acquire is shown as Tract 1 on **Exhibit A**, and the portion of the Property the City will retain is shown as Tract 2 on **Exhibit A**.

The City and the County agree that there is a benefit derived from mutual planning for the future uses of the Property, and therefore desire to enter into this Agreement to set forth their respective rights and obligations related to the acquisition and development of the Property and of the surrounding open space areas.

NOW, THEREFORE, for and in consideration of their mutual promises, the City and the County hereby agree as follows:

1. Purpose

The purpose of this Agreement is to set forth the parties' respective contributions, obligations, and participation in the joint purchase and operation of the Property, as well as to establish a process for creating an overall plan for the future development of the Property.

2. Purchase of the Property

The City acquired the Property December 23, 2013, from TPL in a deed recorded in Book 7418, Page 667. The acquisition included three parcels, only two of which are the subject of this Agreement: parcel # 194086 and parcel # 215439.

3. Financial Contributions toward the Acquisition

A. The City made the following financial contribution towards acquiring the Property:

Purchase Price: \$450,000.00

Taxes: \$250.70

Recording Fees: \$52.00

Legal Fees: \$1,250.00

Title Insurance: \$780.00

B. Tract 3 (parcel # 215440) is included in the purchase price mentioned above in Section 3A, but it is not subject to the terms of this Agreement.

C. The County agrees to pay \$200,000.00 as its financial contribution to acquire approximately 103.477 acres of the Property, said acreage being Tract 1 as shown on **Exhibit A**. This \$200,000.00 will be paid by the County to the City pursuant to the terms and conditions of this Agreement when this Agreement has been approved by both the Durham County Board of Commissioners and the Durham City Council. A closing on the purchase of the Property will be scheduled no more than 30 days from approval of the purchase by all necessary parties. This Agreement is expressly contingent upon the transfer of the Property to the County via special warranty deed from the City warranting only that it has not impaired the title which it received.

4. Grant Encumbrances on the Property

The City and County acknowledge that TPL entered into a grant agreement with CWMTF to assist with its purchase of the Property and granted to CWMTF a permanent conservation easement (Conservation Easement) on Tract 1 prior to the City's purchase of the Property from TPL. The Conservation Easement is recorded in Book 7418, Page 650, Durham County Registry, is attached hereto as **Exhibit C**, and is fully incorporated herein.

The City entered into a grant agreement with the City of Raleigh acting through UNCWI when it acquired the Property (Conservation Funding Agreement). The City and the County agree that

all conditions of said grant regarding management and use of the Property will be met and maintained so long as each party owns its respective part of the Property. The Conservation Funding Agreement is attached hereto as **Exhibit D** and is fully incorporated herein.

5. Distribution and Ownership of the Property

- A. Once paid for in accordance with this Agreement, the City shall grant to the County by special warranty deed approximately 103.477 acres shown as Tract 1 on **Exhibit A**, subject to the terms of Section 3C of this Agreement.
- B. The City shall retain approximately 30 acres shown as Tract 2 on **Exhibit A**.

For further depiction of what each party will have at the completion of the closing between the City and the County, see **Exhibit B**, which is fully incorporated herein.

Both governing bodies holding ownership to the Property shall be liable for and shall maintain the Property in the manner consistent with the provisions of this Agreement, unless otherwise agreed to in writing and signed by both parties.

6. Use of the Property

The parties agree that the Property shall be used in the manner set forth in this Agreement for the following purposes only:

A. The Property belonging to the County shall be maintained in a natural scenic condition and restricted from any development or use that would impair or interfere with the conservation purposes of the Property as set forth in the Conservation Easement. Uses specifically declared to be consistent with the conservation purposes of the Property include, but are not limited to, open space, trails, animal/plant observation, and nature and environmental education.

B. The Property belonging to the City shall be developed and maintained as a public park; the only restrictions are those imposed by the Conservation Funding Agreement with the City of Raleigh, which limit development or use that would impair or interfere with the conservation purposes or public recreation purposes of the Property. Uses specifically declared to be consistent with the purposes of the Property as defined in Conservation Funding Agreement include, but are not limited to, open space, walking trails, parking, restroom facilities, playgrounds, picnic areas, and athletic fields and courts. All development on the City's property shall comply with the 2013 Falls Lake Nutrient Management Rules, except that for the purposes of calculating the limitations on impervious surfaces on Tract 2, the full area of Tract 1 and Tract 2 combined may be used for this calculation, provided that in no event, regardless of the calculation, shall future impervious surface area exceed a total of five (5) acres. The City further agrees to limit the development for recreation on Tract 2 to a footprint of no more than 50% of the total acreage of Tract 2, with the balance of Tract 2 remaining in its forested state.

C. The Property shall be open during daytime hours to the public, including, but not limited to, residents of both the City and the County, subject to reasonable rules and regulations of the owner of the Property and any public use and access restrictions contained in the Conservation Funding Agreement or subsequent conservation easements that may be placed on the Property or on portions thereof.

7. Park Planning and Plan Reviews

The development of the City's parcel potentially impacts the County's maintenance of its parcel in accordance with the terms of the Conservation Easement. Therefore, the City and the County agree that when planning for the development of the City park occurs, staff members from both the City and the County shall be involved in the planning process in order to reach a plan that is satisfactory to both parties. The City shall also involve the County in reviewing development and construction plans for the proposed park. The City shall make reasonable efforts to accommodate the County's requests for design modifications to minimize development impacts on the County's parcel.

8. Property Management

Each party shall be responsible for management and maintenance of its respective parcel. Each party may choose to assist the other party with maintenance or management responsibilities upon request, but this Agreement creates no obligation to do so.

9. Term

The term of this Agreement shall be ten (10) years from the date set forth above, unless otherwise terminated or extended upon mutual agreement of both parties, which agreement shall be made in writing and executed with the same formality as this Agreement. Notwithstanding the foregoing, either party may terminate its participation under this Agreement by providing written notice to the other party so long as the terminating party has no executable obligations remaining hereunder following the effective date of termination.

10. Appointment of Personnel

Each party's respective Manager shall designate the persons to carry out the obligations of that party under this Agreement.

11. Liability

The County and City agree to each be solely responsible for their own acts or omissions in the performance of each of their individual duties hereunder, and shall be financially and legally responsible for all liabilities, costs, damages, expenses and attorney fees resulting from, or attributable to any and all of their individual acts or omissions. No party shall have any obligations to indemnify the other, and/or its agents, employees and representatives.

12. Miscellaneous

(a) **Choice of Law and Forum.** This Agreement shall be deemed made in Durham County, North Carolina, and shall be governed by and construed in accordance with the law of North Carolina. The exclusive forum and venue for all actions arising out of this Agreement shall be the North Carolina General Court of Justice in Durham County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) **Waiver.** No action or failure to act by the City or County shall constitute a waiver of any of its rights or remedies that arise out of this Agreement, nor shall such action or failure to act constitute a waiver of any governmental or sovereign immunity which may apply, or approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) **Performance of Government Functions.** Nothing contained in this Agreement shall be deemed or construed so as to in any way estop, limit, or impair either of the Parties from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) **Severability.** If any provision or portion of a provision of this Agreement shall be unenforceable, the remainder of this Agreement shall be enforceable to the extent permitted by law.

(e) **No Third Party Rights Created.** This Agreement is intended for the benefit of the City and the County and not any other person.

(f) **Principles of Interpretation and Definitions.** In this Agreement, unless the context requires otherwise: (1) The singular includes the plural and the plural the singular; the impersonal pronouns "it" and "its" include the masculine and feminine; references to statutes or regulations are to be construed as including all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to; references to contracts and agreements shall be deemed to include all subsequent amendments to them; the words "include", "including", etc. mean include, including, etc. without limitation. (2) References to a "Section" or "section" shall mean a section of this Agreement. (3) "Contract" and "Agreement", whether or not capitalized, refer to this instrument. (4) Titles of sections, paragraphs, and articles are for convenience only, and shall not be construed to affect the meaning of this Agreement. (5) "Duties" includes obligations. (6) The word "person" includes natural persons, firms, companies, associations, partnerships, trusts, corporations, governmental agencies and units, and other legal entities. (7) The word "day" means calendar day. (8) References to real estate books and pages shall refer to documents on file at the Office of the Register of Deeds of Durham County.

(g) **Modifications. Entire Agreement.** A modification of this Agreement is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a

modification is not enforceable against the City unless the City Manager or a deputy or assistant City Manager signed it for the City. This Agreement contains the entire agreement between the parties pertaining to the subject matter. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this Agreement.

(h) Amendments. This Agreement may be amended at any time by execution by both parties of a written agreement.

IN WITNESS WHEREOF, the parties hereto have authorized this Agreement to be executed by their undersigned officers, to be effective from and after the date first written above.

FOR THE COUNTY OF DURHAM

ATTEST:

Michelle Parker Evans
Clerk to the Board

By _____
Michael D. Page, Chairman of the
Board of Commissioners

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

George K. Quick, Durham County Chief Financial Officer

FOR THE CITY OF DURHAM

ATTEST:

D. Ann Gray, City Clerk

Thomas J. Bonfield, City Manager

This instrument has been pre-audited in the manner required
by the Local Government Budget and Fiscal Control Act.

City of Durham Finance Officer

Exhibit A

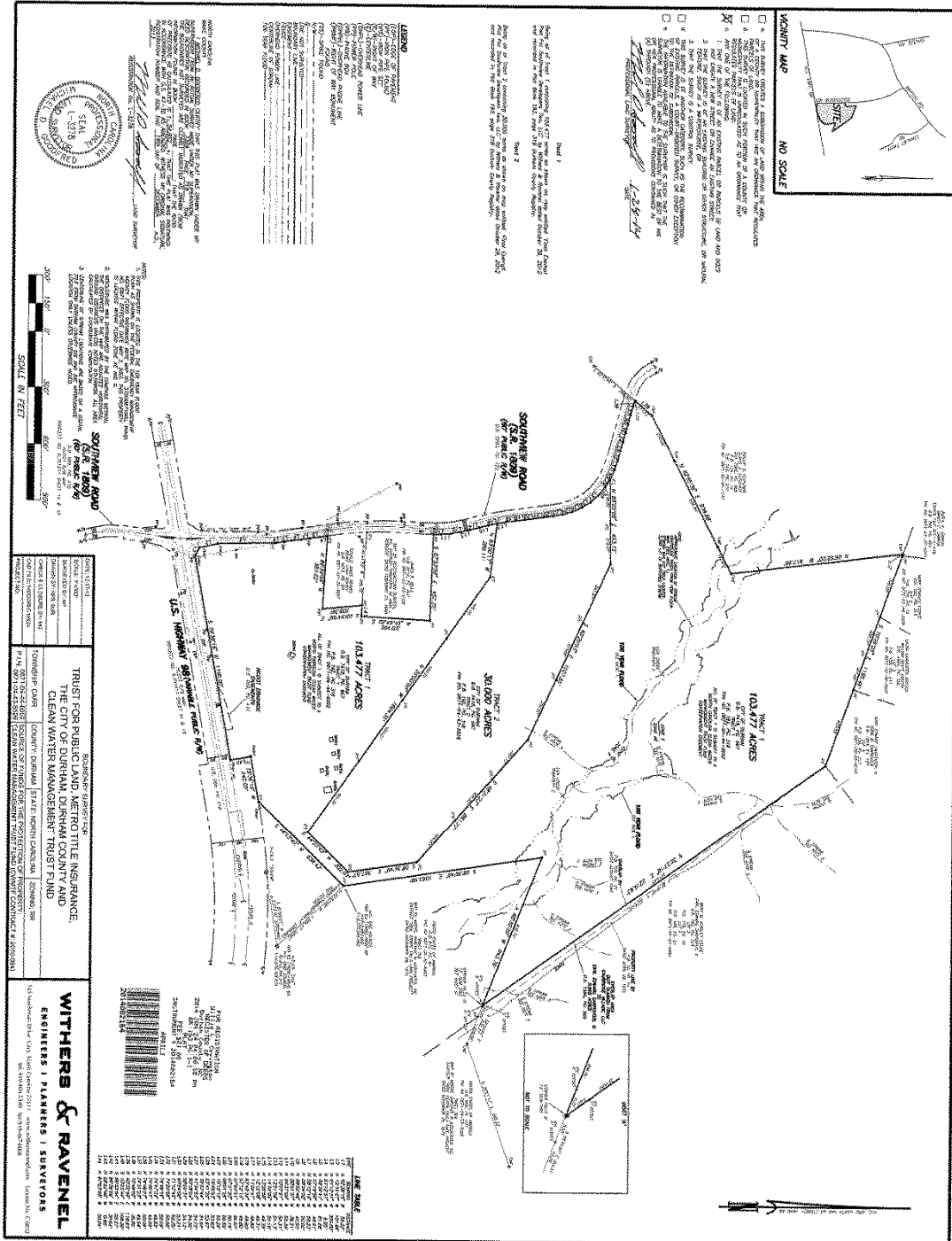


Exhibit B

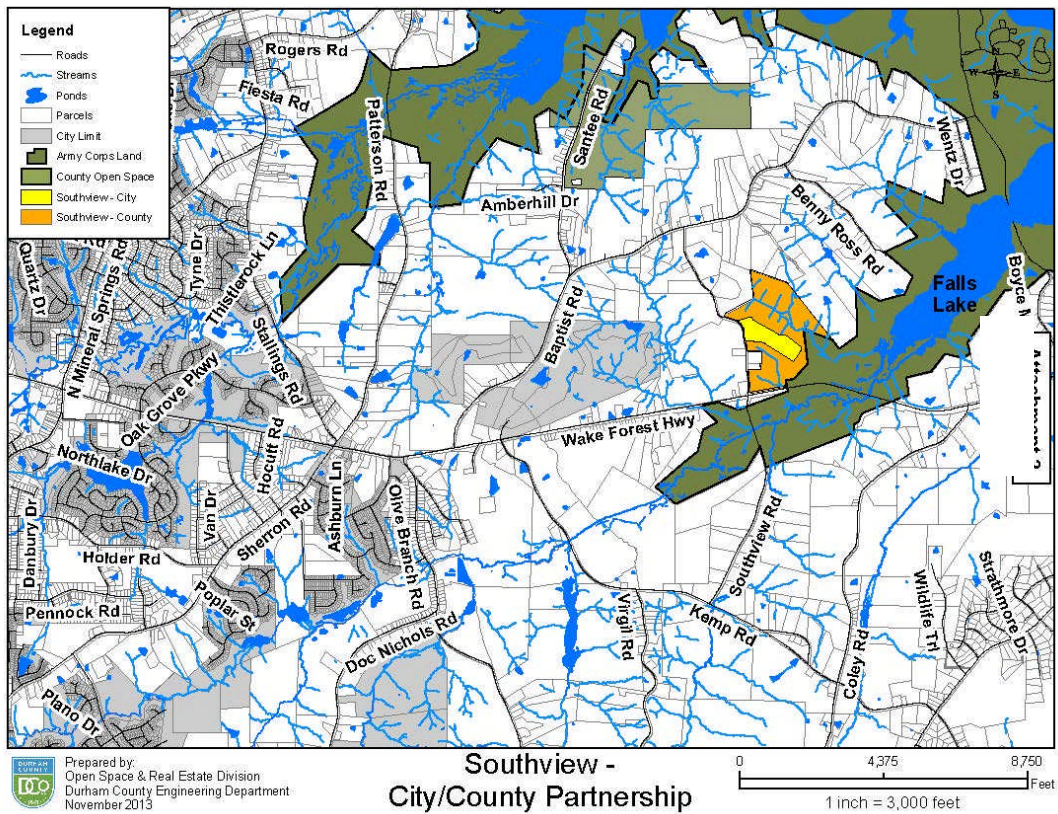
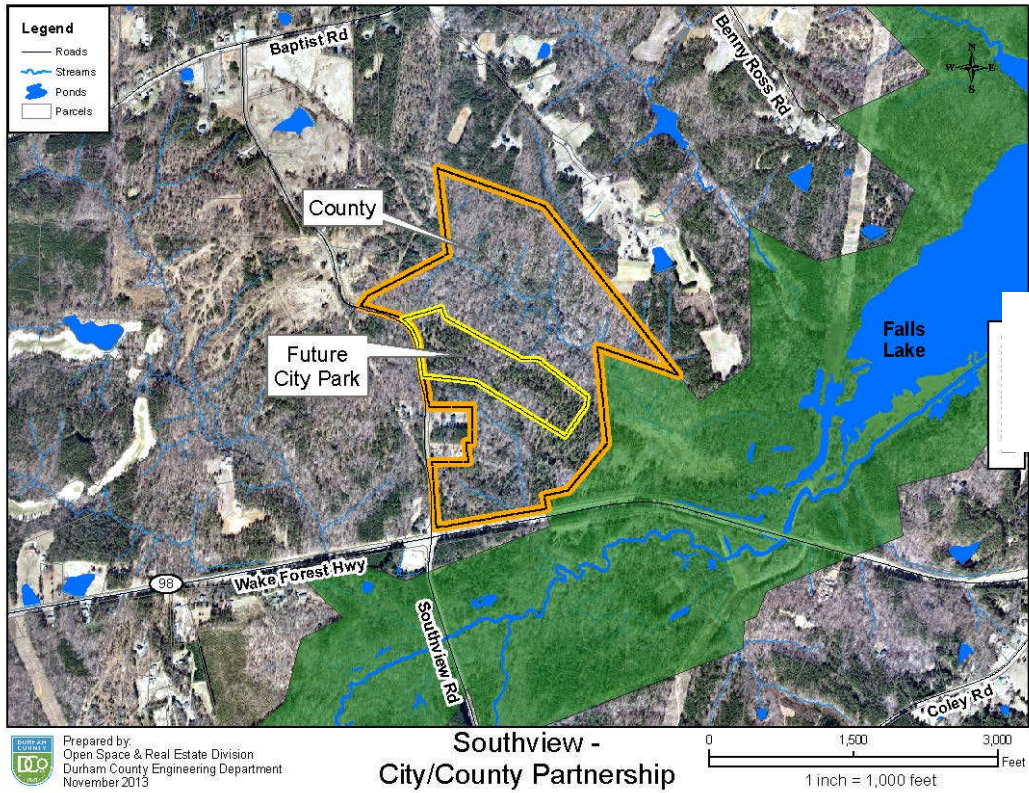


EXHIBIT C

Book7418 - Page650 Page 1 of 17

FOR REGISTRATION
Willie L. Covington
REGISTER OF DEEDS
Durham County, NC
2013 DEC 23 10:05:09 AM
BK: 7418 PG: 650-658
SEE INSTRUMENT
FEE: \$34.00
INSTRUMENT # 2013047280



CONSERVATION EASEMENT
Southview Park Property

Prepared by: The Trust for Public Land, a nonprofit California public benefit corporation and Clean Water Management Trust Fund

After Recording Return to:
The Trust for Public Land (MM)
2610 University Avenue, Suite 300
St. Paul, MN 55114

NORTH CAROLINA
Tax Parcel No. Part of 194086

DURHAM COUNTY
CWMTF No. 2010-094

THIS DEED OF CONSERVATION EASEMENT ("Conservation Easement") is made, given, granted and executed on this the 19th day of December, 2013 by and between **THE TRUST FOR PUBLIC LAND**, a nonprofit public benefit corporation organized and existing under the laws of the State of California with a North Carolina Office with an address at 1200 East Moorhead Street, Suite 250, Charlotte, North Carolina 28204 ("Grantor") and the **STATE OF NORTH CAROLINA** with its address c/o State Property Office, Attn: CWMTF, 1321 Mail Service Center, Raleigh, NC 27699-1321 ("State" or "Grantee") acting by and through **NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**, an independent State agency with an address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651, Attn: Contract Administrator ("Fund").

RECITALS & CONSERVATION PURPOSES

A. As of the date of recordation of this Conservation Easement, Grantor owns in fee simple absolute certain real property lying and being in Carr Township, Durham, North Carolina (the "Property"), and more particularly described on the attached "**Exhibit A**" incorporated by reference as if fully set forth herein.

B. Grantor is a non-profit organization having among its purposes the acquisition on behalf of the public of open space, scenic and recreational lands.

CWMTF CE Template – November 2011
Nonprofit Organization

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C. Grantor and Grantee have agreed to set aside 103.477 acres of the Property (as described in the attached "Exhibit B" and incorporated by reference as if fully set forth herein and hereinafter referred to as the "Easement Area"), for the purpose of creating a conservation easement to preserve, enhance, restore, and maintain the natural features and resources of the Easement Area, to provide habitat for native plants and animals, to improve and maintain water quality, and to control runoff of sediment (hereinafter the "Conservation Values").

D. The State has enacted the Uniform North Carolina Conservation and Historic Preservation Agreements Act (the "Act"), Chapter 121, Article 4 of the North Carolina General Statutes ("NCGS"), which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate for retaining land or water areas predominantly in their natural, scenic, or open condition"

E. The Clean Water Management Trust Fund is authorized by NCGS Chapter 113A, Article 18, to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies.

F. Grantor grants and conveys unto the Grantee, its successors, assigns and designated representative, a right of ingress, egress, and regress to the Easement Area from a public road for the purpose of gaining uninterrupted access to the Easement Area described herein above.

G. Grantor and Grantee recognize that the Easement Area is located adjacent to the Lick Creek and the Easement Area has been deemed by the State to qualify as a riparian buffer, addressing the cleanup and prevention of pollution of the State's surface waters, and the establishment of a network of riparian buffers. Moreover, Grantor and Grantee recognize that the Easement Area has other Conservation Values including fish and wildlife conservation, open space, and scenic values.

H. Grantor has received or will receive a grant from the Fund, identified as Grant Contract No. 2010-094 (the "Grant Contract"), entered into between the Grantor and the Fund and effective as of March 11, 2011, in consideration of which the Grantor has agreed to obtain this Conservation Easement (the "Project"). The terms and conditions of said Grant Contract are hereby incorporated by reference. It is on file and available for public inspection in the offices of the Grantor, the Fund, and the North Carolina Department of Environment and Natural Resources ("NC DENR").

I. Grantor and Grantee acknowledge that an abbreviated description of present conditions and characteristics of the Easement Area, its current use, and state of improvements, water quality sensitive species, including rare and endangered species is attached as "Exhibit C" and by this reference incorporated herein. The Parties may use this Exhibit C as a basis for monitoring compliance with the objectives of preserving the conservation and water quality values of the Easement Area. However, Exhibit C is not intended to preclude the use of other evidence (i.e. surveys, appraisals, phase one environmental site assessment) to establish the present condition of the Easement Area if there is a controversy over such present condition.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Grantor hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, this Conservation Easement of the

nature and character and to the extent hereinafter set forth in, over, through and across the Easement Area, together with the right and easement to preserve and protect the Conservation Values.

The purposes of this Conservation Easement are to provide environmental protection for surface waters of portions of Lick Creek and tributaries, and it shall be so held, maintained, and used therefore. Grantor hereby conveys to Grantee all development rights that are now or hereafter allocated to, implied or inherent in the Easement Area, and the Parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property. It is the further purpose of this Conservation Easement to prevent any use of the Easement Area that will significantly impair or interfere with the preservation of said Conservation Values. Grantor intends that this Conservation Easement will restrict the use of the Easement Area to such activities as are consistent with the Conservation Values described in the Recitals herein.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its representatives, successors, assigns, lessees, agents and licensees.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves certain rights accruing from the fee simple ownership of the Property, including the right to engage in or permit others to engage in the uses of the Easement Area that are not inconsistent with the purpose(s) of this Conservation Easement. All rights reserved by the Grantor, are reserved for Grantor, its representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. Except for the specific restrictions and prohibitions made applicable herein to the Easement Area, Grantor shall continue to own and may use the Property in any lawful manner. The Parties acknowledge and agree that they have no right to agree to any activity that would result in the termination of this Conservation Easement.

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Grantor and Grantee agree that use of the undeveloped farm path located within the Easement Area for management, maintenance and stewardship of the Property does not interfere with the purposes of the Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following uses are reserved as indicated:

A. Passive Recreational Use. Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Easement Area requiring minimal surface alteration of the land, so long as related alterations, construction, improvements, maintenance, activities and uses pose no threat to the Conservation Values. By way of illustration, such passive recreational uses may include non-commercial hunting, fishing, hiking, walking, scientific study, animal/plant observation, nature and environmental education, historic tours, photography, and any other purposes consistent with these accepted uses and the maintenance of the Conservation Value, subject to all applicable federal, state and local laws and regulations. All improvements shall be subject to the terms and conditions set forth herein and by the aforementioned Grant Contract. Usage of motorized vehicles in the Easement Area is prohibited, except as they are used exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. Public Use and Access. Grantor reserves the right to allow public access and use of the Easement Area for the purpose of creating open space with associated passive recreational activities as provided for herein.

C. Hiking, Greenway, and Access Trails. Grantor reserves the right to construct and maintain paved and/or unpaved trails on the Easement Area, including the right to maintain and use existing access trails. All unpaved trails must be located a minimum distance of fifteen (15) feet from the top of the bank and tributaries of Lick Creek, unless such locations are physically impracticable. All paved trails must be located a minimum distance of 30 feet from the top of bank of surface waters. In the construction of such trails and when required by the terrain, boardwalks, ramps and handrails are permitted herein. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the trails. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation of Lick Creek either during or after construction.

D. Native Community Restoration. The Parties hereto agree and acknowledge that the Grantor reserves the right to perform all activities necessary to restore the native plant and animal communities on the Easement Area. All necessary care shall be taken to complete the installation of such features in a manner so as not to cause or allow sedimentation either during or after installation.

E. Pedestrian Foot Bridges. Grantor reserves the right to construct, maintain, and gain access to five (5) pedestrian footbridge(s) to be constructed five (5) to ten (10) feet wide across the tributaries within the easement area provided such bridges are connected to the trails permitted herein and permitted by all applicable regulatory authorities.

F. Hunting and Fishing. Grantor reserves the right to hunt and fish pursuant to all federal, state, and local rules and regulations.

G. Vegetation Management. Grantor reserves the right to manage vegetation for the following activities: (1) boundary marking, fencing, and signage; (2) selective cutting and prescribed burning and the application of herbicides and pesticides appropriately labeled for fire containment, insect and disease control, restoration of hydrology, wetlands enhancement, and or control of invasive exotic plants; (3) removal of damaged trees and debris caused by storms and fire and posing a threat to life or property; and (4) as needed for removal of existing farm buildings.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural, scenic, wooded and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this Conservation Easement.

Except for those rights specifically reserved to Grantor in Article II and without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

A. Industrial and Commercial Use. Industrial and commercial activities are prohibited on the Easement Area.

B. Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural and animal husbandry operations and any rights of passage for such purposes are prohibited on the Easement Area.

C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features within the Easement Area except as noted in Article II.

D. Construction of Buildings and Recreational Use. There shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or any other temporary or permanent structure or facility on or above the Easement Area.

E. Signs. Signs are not permitted within the Easement except as follows: no trespassing signs; local, state, or federal traffic or similar information signs; for sale or lease signs; signs identifying the conservation values of the Easement; signs identifying the Grantor as owner of the Property; signs identifying the Grantee as holder of the Conservation Easement; and educational and interpretative signs.

F. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials. There shall be no change in the topography of the land in any manner except as necessary for the purpose of combating erosion or incidental to any conservation management activities otherwise permitted on the Easement Area.

G. Wetlands and Water Quality. Except as set forth in Article II above, there shall be no pollution or alteration of surface waters and no construction or other activities that would be detrimental to water quality or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Easement Area or into any surface waters, or cause soil degradation or erosion, nor any diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology, wetlands enhancement, or to enhance or improve water quality as permitted by state and any other appropriate authorities, and then only after written approval is granted by the Fund for such activities.

H. Dumping. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Easement Area is prohibited.

I. Conveyance and Subdivision. The Easement Area or any underlying property interest within the Easement Area may not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block of property.

J. Open Space and Development Rights. The Easement Area shall not be used to satisfy open space requirements of any cluster or other development scheme; nor shall the development rights encumbered hereby be transferred to any other land pursuant to a transfer of development rights scheme or cluster development arrangement or otherwise.

K. Mitigation. There shall be no use of the Easement Area or any portion thereof to satisfy compensatory mitigation requirements under 33 USC Section 1344 or NCGS §143-214.11 or any successor or replacement provision of the foregoing.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement and Remedies. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement, and to require the prompt restoration to the condition required by this Conservation Easement of such areas or features of the Easement Area that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor in writing of such breach. The Grantor shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If the breach remains uncured after ninety (90) days, the Grantee may enforce this Conservation Easement by appropriate legal proceedings including damages, injunctive and other relief. The Grantee shall also have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Easement Area; or (c) to seek damages from any appropriate person or entity. Notwithstanding the foregoing, the Grantee reserves the immediate right, without notice, to obtain a temporary restraining order, injunction or other appropriate relief if the breach of the term of this Conservation Easement is or would irreversibly or otherwise materially impair the benefits to be derived from this Conservation Easement. The Grantor and Grantee acknowledge that under such circumstances damage to the Grantee would be irreparable and remedies at law will be inadequate. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available to Grantee in connection with this Conservation Easement.

B. Access for Inspection and Right of Entry. Grantee shall have the right, by and through their agents and employees, to enter the Easement Area to inspect the Easement Area for compliance with this Conservation Easement at all reasonable times and with prior notice and, if necessary, cross other lands retained by the Grantor for the purposes of (1) inspecting the Easement Area to determine if the Grantor is complying with the covenants and purposes of this Conservation Easement; (2) enforcing the terms of this Conservation Easement; (3) taking any and all actions with respect to the Easement Area as may be necessary or appropriate with or without order of the Court, to remedy or abate violations hereof; and (4) making scientific and educational observations and studies and taking samples in such a manner as will not disturb the quiet enjoyment of the Property by the Grantor.

C. Termination and Proceeds of Property Rights Created. This Conservation Easement gives rise to a property right that is immediately vested in the Grantee at the time of recordation, with a fair market value that is equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole on the date of the recording of this Conservation Easement. This proportionate value shall remain constant.

1. Eminent Domain. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to Grantee and the Fund, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding according to Grantee's proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor

regulation. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding. As allowed by NCGS §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the conservation purposes set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party's respective contribution to the purchase price of the Property and this Conservation Easement. For the purposes of determining any distribution of proceeds pursuant to this section, Grantor's proportionate contribution to the purchase price shall be deemed to be 68%, and Grantee's proportionate contribution to the purchase price shall be deemed to be 32%.

2. **Changed Conditions.** If a subsequent, unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for conservation purposes, and the Conservation Easement is extinguished by judicial proceeding, the Grantee, its successor and assigns, shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding according to Grantee's proportional interest in the value of the Property as determined under Treasury Regulations §1.170A-14(g)(6)(ii) or any successor regulation. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding. As allowed by NCGS §146-30(a), Grantee shall use its share of the Proceeds of Sale in a manner consistent with the conservation purposes set forth herein. Notwithstanding the foregoing, all Proceeds of Sale shall be distributed among the Parties according to each Party's respective contribution to the purchase price of the Property and this Conservation Easement. For the purposes of determining any distribution of proceeds pursuant to this section, Grantor's proportionate contribution to the purchase price shall be deemed to be 68%, and Grantee's proportionate contribution to the purchase price shall be deemed to be 32%.

D. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Easement Area resulting from the acts of third parties not authorized by Grantor, or from causes beyond the Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, property damage or harm to the Easement Area resulting from such causes.

E. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, including, without limitation, any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be borne by Grantor.

F. No Waiver. Enforcement of this Conservation Easement shall be at the discretion of the Grantee and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. TITLE

The Grantor covenants and represents and warrants (i) that as of the date of recordation of this Conservation Easement that the Grantor is the sole owner and is seized of the Property and Easement Area in fee simple and has good right to grant and convey the aforesaid Conservation Easement; (ii) that there is legal access to the Property and the Easement Area, that the Property and Easement Area are free and clear of any and all encumbrances, except for those matters of record and that would be disclosed by a comprehensive survey of the Property; (iii) Grantor shall defend its title against the claims of all persons whomsoever; and (iv) Grantor covenants that the Grantee, its successors and assigns, shall have the right to monitor and defend the terms of the aforesaid Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Stewardship of the Conservation Easement. Pursuant to the terms of the Grant Contract, Grantor, its successors and assignees, hereby covenants and agrees that it will monitor and observe the Easement Area in perpetuity to assure compliance with the purposes and provisions of this Conservation Easement and the provisions of the Grant Contract, and that it will report on the condition of the Easement Area no less frequently than once a year; and further will report immediately to the State and the Fund any observed and/or known violations of this Conservation Easement or the Grant Contract. Grantee understands and agrees that upon The Trust for Public Land's conveyance of its fee interest in the Easement Area to the City of Durham or Durham County that The Trust for Public Land has no obligations under this Article VI.A. and that notwithstanding the terms of the Grant Contract to the contrary, The Trust for Public Land is relieved of any and all outstanding obligations under the Grant Contract. Grantee further understands and agrees that if the City of Durham acquires the fee interest in the Easement Area and subsequently conveys said fee interest to Durham County that the City of Durham will have no further obligations under this Article VI.A.

B. Subsequent Transfers of the Fee. Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof including the Easement Area, to any party other than the City of Durham or Durham County, to notify the Grantee and the Fund in writing of the names and addresses of any party to whom the Property is to be transferred at or prior to the time said transfer is consummated. Grantor, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed, or other legal instrument by which any interest in the Property is conveyed. The Property owner shall not convey the Property or any interest therein, and shall not incur, assume, or suffer to exist any lien, upon or with respect to the Property, without disclosing to the prospective buyer the Conservation Easement, the obligations of the Property owner and limitations on use of the Property. Grantor covenants that subsequent to any transfer of the fee to the Easement Area as provided for herein to any entity other than the City of Durham or Durham County, it will continue to monitor and observe the Easement Area in accordance with NCGS §113A-253.2 or any successor law, and the Fund's internal policies and procedures, for such purposes as are set forth by this Conservation Easement and Grant Contract, and to report to the Fund and the State any observed violations on the Easement Area. Grantee understands and agrees that upon The Trust for Public Land's conveyance of its fee interest in the Easement Area to the City of Durham or Durham County that The Trust for Public Land will have no further obligations under this Conservation Easement. Grantee further understands and agrees that if the City of Durham acquires the fee interest in the Easement Area and subsequently conveys said fee interest to Durham County that the City of Durham will have no further obligations under this Conservation Easement.

C. Subsequent Transfers of the Conservation Easement. The Parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable with any such assignee having all the rights and remedies of Grantee hereunder. The Parties hereby covenant and agree, that in the event this Conservation Easement is transferred or assigned, the transferee or assignee of the Conservation Easement will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "Code") that is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, a qualified holder as that term is defined in the Act or any successor statute, and a qualified grant recipient pursuant to NCGS Chapter 113A, Article 18. The Parties further covenant and agree that the terms of the transfer or the assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance as set forth herein, but acknowledge specifically that any transfer or assignment of the Conservation Easement shall have no effect on the obligation of the then fee owner of the Easement Area to provide stewardship of the Conservation Easement as set forth in this Article VI.

D. Existing Responsibilities of Grantor and Grantee Not Affected. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation to the Grantor as owner of the Property, which includes the Easement Area. Among other things, this shall apply to:

1. **Taxes.** The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Easement Area, the Grantor will reimburse the Grantee for the same.
2. **Upkeep and Maintenance.** The Grantor shall continue to be solely responsible for the upkeep and maintenance of the Easement Area, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Easement Area.
3. **Liability and Indemnification.** If the Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Easement Area, the Grantor shall to the extent permitted by law indemnify and reimburse the Grantee for these payments, as well as reasonable attorneys' fees and other expenses of defending itself, unless the Grantee has committed a deliberate act that is determined to be the sole cause of the injury or damage.

E. Conservation Purpose. Grantor and Grantee, for itself, its successors and assigns, agree that this Conservation Easement shall be held exclusively for conservation purposes set forth by the Grant Contract, this Conservation Easement and as specified in Section 170(h)(4)(A) of the Code. Further, this Conservation Easement shall be construed to promote the purposes of the Act and such purposes of this Conservation Easement as are defined in Section 170(h)(4)(A) of the Code.

F. Recording. Grantor shall record this instrument and any amendment hereto in timely fashion in the official records of Durham County, North Carolina, and Grantee may re-record the same at any time as may be required to preserve Grantee's rights.

G. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, to the parties at their addresses shown below:

If to Grantee:
Nancy Guthrie
NC Clean Water Management Trust Fund
1651 Mail Service Center
Raleigh, NC 27699

If to Grantor:
Kent Whitehead
The Trust for Public Land
660 Pennsylvania Avenue
SE Suite 401
Washington, DC 20003

H. Amendments. Grantor and Grantee, or their successors in interest in the Property, are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement; provided, however, if Grantee is other than the State of North Carolina acting by and through the North Carolina Clean Water Management Trust Fund that such amendment(s) require the written consent of the Fund and shall be effective upon recording in the public records of Durham County, North Carolina.

I. Environmental Condition of the Property. The Grantor warrants, represents and covenants to the Grantee that to the best of its knowledge: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations; (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith; (c) that there is no environmental condition existing on the Property or the Easement Area that may prohibit or impede use of the Property or the Easement Area for the purposes set forth herein; and (d) the Grantor will not allow such uses or conditions.

J. Indemnity. Grantor agrees to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless Grantee from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of hazardous substance, waste or other regulated material in, on or under the Property.

K. Entire Agreement. The Recitals set forth above and the exhibits, if any, attached hereto are incorporated herein by reference. This instrument, including the Grant Contract incorporated by reference herein, sets forth the entire agreement of the Grantor and Grantee with respect to the Project and supersedes all prior discussions, negotiations, understandings or agreements relating to the Project. To the extent that this Conservation Easement is in conflict with the Grant Contract, the terms of the Conservation Easement shall control.

L. Interpretation. This Conservation Easement shall be construed and interpreted under the laws of the State and the United States, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein. The normal rule of construction of ambiguities against the drafting party shall not apply in the interpretation of this Conservation Easement. Further, this Conservation Easement shall be construed to promote the purposes of the Act, which authorizes the creation of conservation

agreements for purposes including those set forth herein, and such conservation purposes as are define in Section 170(h) (4) (A) of the Code. If any provision of this Conservation Easement is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

M. Parties. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall likewise apply to their respective heirs, executors, administrators, successors and assigns.

N. No Extinguishment through Merger. The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property and Easement Area. Further, the Parties agree that should Grantee, or any successor in interest to Grantee, acquire title to all or a portion of the fee interest in the Property subject to this Conservation Easement, (i) said owner shall observe and be bound by the obligations and the restrictions imposed upon the Property by this Conservation Easement, and (ii) this Conservation Easement shall not be extinguished through the doctrine of merger in whole or in part in view of the public interest in its enforcement.

O. Subsequent Liens. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use this Property for collateral for borrowing purposes, provided that any mortgage or lien arising there from shall be subordinated to this Conservation Easement.

P. Gender. The designations Grantor, Grantee, State, and Fund, as used herein shall include the Parties, their heirs, administrators, successors and assigns, and shall include the singular, plural, masculine, feminine or neuter as the context may require.

Q. Headings. The headings of the various sections of this Conservation Easement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Conservation Easement.

TO HAVE AND TO HOLD unto the State by and through the Fund, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor and Grantee, by authority duly given, have hereunto caused these presents to be executed in such form as to be binding, the day and year first above written.

[Signature and notary acknowledgement follow on next page]

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GRANTOR:
THE TRUST FOR PUBLIC LAND

BY: Margaret J. MaddenNAME: Margaret J. MaddenTITLE: Counsel

ATTEST:

Michael C. Zender, Assistant Secretary

Minnesota
Ramsey COUNTY

I, the undersigned Notary Public, do hereby certify that Margaret J. Madden personally came before me this date and acknowledged that he/she is the Counsel of the The Trust for Public Land, a California nonprofit public benefit corporation, and that by authority duly given and as the act of the corporation, the foregoing document was signed in its name by Margaret J. Madden, its Counsel, sealed with its corporate seal and attested by him/herself as its Counsel. Witness my hand and official stamp or seal, this the December day of 2013.

Laurie J.O. Johnson, Notary Public
Print Name: Laurie J.O. Johnson

My Commission Expires: 1-31-2017

STAMP/SEAL



"EXHIBIT A"

**LEGAL DESCRIPTION OF PROPERTY
CARR TOWNSHIP
DURHAM COUNTY, NORTH CAROLINA**

All of Tract 1, containing 103.477 acres as shown on plat thereof by Withers & Ravenel, Inc. entitled "Final Exempt Plat for Southview Developers, LLC" and recorded in Plat Book 192, Page 318 Durham County Registry, reference to which is hereby made for a more particular description thereof.

All of Tract 2, containing 30 acres as shown on plat thereof by Withers & Ravenel, Inc. entitled "Final Exempt Plat for Southview Developers, LLC" and recorded in Plat Book 192, Page 318 Durham County Registry, reference to which is hereby made for a more particular description thereof.

"EXHIBIT B"

LEGAL DESCRIPTION OF CWMTF EASEMENT AREA

All of Tract 1, containing 103.477 acres as shown on plat thereof by Withers & Ravenel, Inc. entitled "Final Exempt Plat for Southview Developers Two, LLC" and recorded in Plat Book 192, Page 318 Durham County Registry, reference to which is hereby made for a more particular description thereof.

EXHIBIT C**CHARACTERISTICS OF THE PROPERTY**

Current use: The acquisition area of the Southview Property, consisting of approximately 134 acres, includes a mosaic of typical Piedmont forest vegetation, with some maturing mixed hardwoods (50-75 year old stands of white, red and black oak, sweetgum, and red maple) with scattered stands of pine and loblolly pine plantation in upland areas. Some of the pine plantation areas exhibit evidence of selective logging within the last 15 years and are currently regenerating. All of the riparian corridors are intact with maturing forest vegetation.

Plant and Animal Species: Overall, the Southview Property provides excellent habitat for a variety of animal species, including deer, turkey, squirrel and rabbit, which are common to the Falls Lake area. At its southernmost corner, the Southview Property adjoins a recognized State Natural Heritage Area (SNHA) of forested riparian corridor along Lick Creek, which is owned by the US Army Corp of Engineers (ACOE) as part of the Falls Lake Reservoir and waterfowl impoundment. This SNHA is home to Douglass's Bittercress, a rare flowering ground cover found within the Lick Creek Bottomland Hardwood Forest area.

Other Characteristics: Protection of natural riparian forest buffers on the Southview tract will complement the important stream and wetland restoration work underway in the Lick Creek Watershed as part of a Section 319 funded collaboration of UNRBA, FEP and NC DWQ. This project is restoring habitat and stream quality with the goal of addressing the biological impairment, and includes projects and monitoring sites within ½ mile of the Southview tract along Southview Road.

The East Durham Open Space Plan sets conservation priorities for Durham County and Durham City in the vicinity of Falls Lake. It specifically highlights the Little Lick Creek corridor as a priority for land acquisition and a trail connection to the ACOE land adjoining the Southview tract and identifies a series of proposed wildlife protection areas along the corridor. The Southview Property is also directly linked to a 45 mile central section of North Carolina's Mountains-to-Sea Trail which extends through the Falls of the Neuse Recreation Area along Lick Creek and around Falls Lake.

Improvements: The property includes several dilapidated farm structures as shown on Exhibit D that are in various states of disrepair. Future removal of these buildings is permitted but optional. The property also includes several old farm access and maintenance trails shown on Exhibit D and these may be maintained in an unpaved condition.

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Exhibit D
Map of Current Conditions

See following page

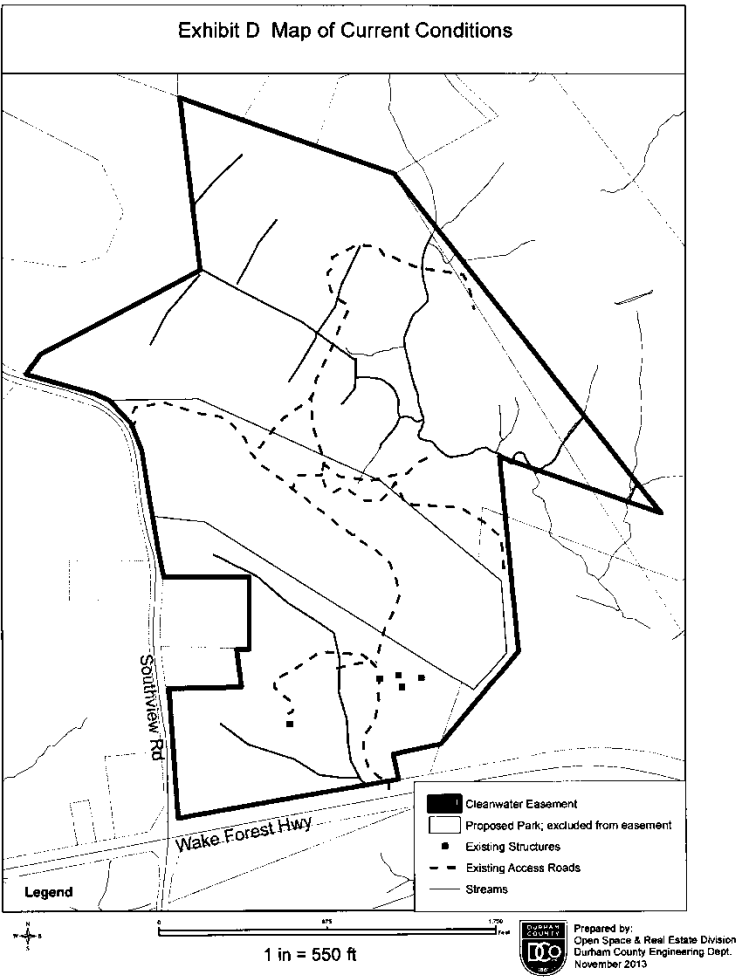
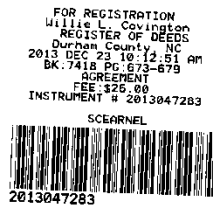


Exhibit D

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Return to:
Conservation Trust for North Carolina
Attn: Caitlin Burke
1028 Washington Street
Raleigh, NC 27605

CONSERVATION FUNDING AGREEMENT

This Conservation Funding Agreement (the "Agreement") is by and between City of Durham ("Owner") and City of Raleigh (the "Funding Party") and is effective as of December 23, 2013.

RECITALS:

A. Owner owns the real property commonly known as the Southview Property and being further described on Exhibit A attached hereto and incorporated herein by reference (the "Property"). Tract 1 of the Property, as described on Exhibit A ("Tract 1"), is encumbered by a Conservation Easement in favor of the North Carolina Clean Water Management Trust Fund (the "Conservation Easement"). This Conservation Easement will adequately protect the Conservation Values (as defined below) of Tract 1.

B. The Funding Party provided the specified sum of \$250,000 to Owner to be used toward Owner's purchase of the Property (the "Funding").

C. It is the policy goal of the Funding Party to conserve the Property to protect the Conservation Values, as defined below, that contribute to maintaining water quality in Falls Lake and that provide wildlife habitat and open space. The Conservation Easement limits the future use of Tract 1 to protect the Conservation Values. To further protect the Conservation Values of the Property, Owner agrees that Tract 2 of the Property, as described on Exhibit A ("Tract 2"), may be used only for public recreation, defined as walking trails, playgrounds, picnic areas, athletic fields and courts and restroom facilities ("Recreation Development"). All development

on Tract 2 shall comply with the current Falls Lake Nutrient Management Rules in effect as of the effective date of this Conservation Funding Agreement. For purposes of calculating the limitation on impervious surfaces on Tract 2, the full area of Tract 1 and Tract 2 combined may be used for this calculation, provided however that in no event, regardless of the calculation, shall future impervious surface area exceed a total of five (5) acres. This ability to combine the areas of Tract 1 and Tract 2 is limited to the limitation on impervious surfaces only and is for the purposes of this Conservation Funding Agreement only, and shall have no effect on Owner's requirements to comply with other aspects of the Falls Lake Nutrient Management Rules or any other local, state, or federal laws or regulations. In addition, Owner agrees that future development on Tract 2 will utilize low-impact or green development. Owner further agrees to limit the Recreation Development on Tract 2 to a footprint of no more than 50% of the total acreage of Tract 2, with the balance of Tract 2 remaining in its forested state. The matters set forth in this Recital C are referred to collectively as the "Policy Goals".

D. The Property is located in the Falls Lake watershed, and exists in a relatively natural state as more particularly described on Exhibit B attached hereto and incorporated herein by reference. The attributes of the Property set forth on Exhibit B are herein collectively referred to as the "Conservation Values".

E. The conservation of the Property will fulfill the Policy Goals.

F. The Funding Party has provided the Funding to Owner on the condition that Owner agreed to protect the Conservation Values of the Property in perpetuity and enter into this Agreement, and Owner has agreed to these conditions.

Now, therefore, in exchange for receiving the Funding from the Funding Party, Owner hereby agrees as follows:

1. Recitals. The foregoing recitals are incorporated in this Agreement.
2. Approval for Change in Use. Owner shall not take any action that results in, or could reasonably be expected to result in, a material adverse effect to or on any of the Conservation Values of the Property. The parties agree that Exhibit B accurately describes the condition of the Property and the Conservation Values of the Property as of the date of the recording of this Agreement.
3. Violation of Agreement. The Funding Party shall have all remedies available at law or equity for a breach of this Agreement by Owner. If a court determines that a violation may exist or has occurred, the Funding Party may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Owner to restore the Property to its condition prior to the violation, as restoration of the Property may be the only appropriate remedy. The failure of the Funding Party to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Each party shall bear its own costs of legal action to enforce this Agreement.

4. Owner Representations. Owner represents and warrants to Funding Party that (i) Owner holds indefeasible fee simple title to the Property, and that the Property is not subject to any deed of trust, mortgage, money judgment or other lien securing an amount owed or any encumbrance that does or could result in anything that would have a material adverse effect on the Conservation Values, (ii) Owner is duly authorized to enter into this Agreement, and (iii) Owner's execution and delivery of this Agreement will not violate any Agreement to which Owner is a party.

5. Agreement Runs with Land. This Agreement creates a negative servitude in favor of the Funding Party, touches and concerns the Property and is intended to run with the land, and shall bind Owner's successors and assigns. The parties agree that this Agreement vests in the Funding Party compensable interests in land in the event of condemnation. Any instrument of conveyance of any interest in the Property (including, but not limited to, deeds, deeds of trust, easements, and leases) shall disclose the existence of this Agreement and shall include reference to the book and page number where this Agreement is recorded in the land records.

6. Estoppel. Within 15 days of a written request by Owner, the Funding Party shall execute and deliver to Owner any commercially reasonable estoppel certificate stating that Owner is in compliance with this Agreement, or, in the alternative, that Owner is in default under this Agreement and specifying the nature of the default.

7. Entire Agreement, Severability. This instrument sets forth the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior discussions, negotiations, understandings or agreements relating to this Agreement. If any provision is found to be invalid, the remainder of the provisions of this Agreement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

In witness whereof, the parties to this Agreement have caused it to be duly executed to be effective as of the date first written above.

[Signatures follow on following pages.]

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Owner:



CITY OF DURHAM

Attest:

 City Clerk

By:
 Thomas J. Benson City Manager

ACKNOWLEDGMENT BY CITY OF DURHAM

Name of other party to the contract: City of RaleighTitle of the contract: Conservation Funding Agreement

I, Hattie N. Johnson, a notary public, certify:
 (Type or print name of Notary Public)

(1) D. Ann Gray personally appeared before me
 (Type or print name of City Clerk or Deputy City Clerk who attested)

in Durham County, N. C. on this day; (2) I have personal knowledge of her identity; and (3) she acknowledged that by authority duly given and as the act of the City of Durham, the foregoing document was signed in its corporate name by its _____ City Manager, sealed with its corporate seal, and attested by its said City Clerk or Deputy City Clerk.

This the 17th day of December, 2013.

My commission expires:

11-04-2014

Notary Public



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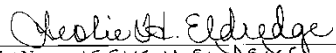
Funding Party:

City of Raleigh

By: Its: ASSISTANT CITY MANAGER

**STATE OF NORTH CAROLINA
WAKE COUNTY**

I, the undersigned Notary Public, do hereby certify that DANIEL HOWE personally came before me this date and acknowledged that he/she is the ASSISTANT CITY MANAGER of the City of Raleigh, a political subdivision of the State of North Carolina, and that by authority duly given and as the act of the city, the foregoing document was signed in its name by DANIEL HOWE, its ASSISTANT CITY MANAGER. Witness my hand and official stamp or seal, this the 20 day of DECEMBER, 2013.

 Notary Public
Print Name: LESLIE H. ELDRIDGE

My Commission Expires: NOV. 11, 2018

STAMP/SEAL



EXHIBIT A

Legal Description of Property

Tract 1:

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EXHIBIT B

Description of Property Features

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